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**International
Criminal
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TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

PUBLIC

**Public redacted version of "Trust Fund for Victims' submission of draft application form", submitted on 26 October 2018.
ICC-01/12-01/15-289-Conf**

Source: Trust Fund for Victims

To be notified in accordance with Regulation 31 of the Regulations of the Court to:

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Legal Representatives of Victims

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Section**

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I. BACKGROUND AND PROCEDURAL HISTORY

1. On 23 April 2018, the Trust Fund for Victims (“Trust Fund”) submitted its draft implementation plan (“DIP”) for reparations in the present case, in which it proposed *inter alia* parameters for the organisation of a screening process of applicants for individual reparations.¹

2. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued its decision on the DIP (“Decision on DIP”),² approving with minor amendments, the organisation of the screening process.³ The Trial Chamber also directed the Trust Fund to produce a draft application form for individual reparation, in consultation with all relevant stakeholders, and to submit it to the Trial Chamber as soon as possible.⁴

3. On 5 September 2018, the Trust Fund emailed a draft of the new application form for individual reparations (“Draft Application Form” or “Form”) to the Legal Representative of Victims (“LRV”), the Defence and the Victims Participation and Reparations Section (“VPRS”),⁵ requesting their feedback by 14 September 2018.⁶ By 14 September, both VPRS and the Defence had replied by email.⁷

4. On 14 September 2018, the Trust Fund filed its second monthly update report of the implementation plan with two confidential annexes, corresponding to a copy of the Draft Application Form sent to the parties and VPRS and an updated list of authorities who may possess signatory authority in the administrative screening process (“Second Monthly Report”).⁸

¹ Draft Implementation Plan for Reparations, notified on 23 April 2018, ICC-01/12-01/15-265-Conf, with one confidential annex. A corrigendum was filed on 30 April 2018: ICC-01/12-01/15-265-Conf-Corr, with one confidential annex. A public redacted version was filed on 18 May 2018: ICC-01/12-01/15-265-Corr-Red.

² Public redacted version of “Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations”, ICC-01/12-01/15-273-Red.

³ Decision on DIP, para. 29.

⁴ Decision on DIP, para. 30.

⁵ Decision on Draft Implementation Plan, para. 30.

⁶ Email sent by the Trust Fund to the Defence counsel, the LRV team and VPRS on 5 September 2018 at 16:59.

⁷ VPRS replied to the Trust Fund on 6 September 2018 at 12:47. The Defence responded to the Trust Fund on 14 September 2018 at 14:50.

⁸ Second Monthly Update report on the implementation plan, ICC-01/12-01/15-283-Conf, with two confidential annexes. The Trust Fund had initially submitted a list of authorities together with the DIP (ICC-01/12-01/15-265-Conf-Anx1).

5. On 24 September 2018, the LRV filed observations on the Second Monthly Report (“LRV Observations”).⁹ In respect of the Form, the LRV submitted that: (i) the term “business” used in the context of reparations of economic harm should be replaced by “material harm caused by the destruction”;¹⁰ (ii) the fields contained in the Form seemed to indicate that the Trust Fund was retaining a restrictive interpretation of the link required to the Protected Building to receive reparations for economic harm (“Exclusive Link Requirement”);¹¹ and (iii) the fields contained in the Form seemed to indicate that the Trust Fund was making a distinction between masons and guardians (presumed to have suffered individual economic harm) and others (expected to demonstrate that they fulfil the Exclusive Link Requirement by producing evidence).¹² In respect of the list of authorities, the LRV made submissions on the appropriateness and necessity to include *chefs coutumiers* and *chefs spirituels* as authorities who may possess signatory power.¹³

6. On 5 October 2018, the Defence submitted observations on the Second Monthly Report, requesting clarification as to the traditional leaders put forward by the LRV and arguing that the attestations they would sign should be received only if it is first established on which matters certain authorities may sign. The Defence also submitted that attestations signed by authorities not on the Trust Fund’s list should be rejected and requested the Trial Chamber’s involvement to rule on the appropriate list of authorities.¹⁴

7. On 12 October 2018, following exchanges with the Trust Fund,¹⁵ the LRV sent his observations on the Form.¹⁶ On 17 October 2018, the Trust Fund replied to the LRV and attached an updated version of the Form indicating that it would be finalised by 19 October 2018.¹⁷

⁹ *Observations du Représentant légal sur le Second rapport mensuel d’activité du Fonds au profit des victimes et sur le processus de sélection des victimes aux réparations*, ICC-01/12-01/15-284-Conf.

¹⁰ LRV Observations, para. 61.

¹¹ LRV Observations, paras 62-63.

¹² LRV Observations, paras 64-70.

¹³ LRV Observations, paras 47-51.

¹⁴ *Observations de la Défense sur le deuxième rapport mensuel ICC-01/12-01/15-283-Conf du Fonds au profit des victimes et réponse aux observations ICC-01/12-01/15-284-Conf du représentant légal des victimes*, ICC-01/12-01/15-285-Conf, paras 24, 27.

¹⁵ See Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf, paras 7-9.

¹⁶ Email sent by the LRV team to the Trust Fund on 12 October 2018 at 9:11 AM.

¹⁷ Email sent by the Trust Fund to the LRV on 17 October 2018 at 10:51.

8. On 15 October 2018, the Trust Fund submitted its third monthly update report on the updated implementation plan (“UIP”), addressing the LRV Observations (“Third Monthly Report”).¹⁸ The Trust Fund clarified that the term “business” proposed to permit applicants claiming to be business owner or employee stems directly from the Trial Chamber’s decision and rejected the suggestion to replace it with “material harm caused by the destruction”.¹⁹ The Trust Fund also acknowledged that the Form makes a distinction between masons and guardians on the one hand and people exercising other vocations on the other hand because it is in line with the Trial Chamber’s decisions on this issue.²⁰ Lastly, the Trust Fund reiterated that, while it does not dispute that traditional leaders may serve as persons of authority, it would require additional background information from the LRV on the traditional leaders he puts forward.²¹

9. On 18 October 2018, the LRV requested that further changes be made to the Form,²² which were discussed by phone on 19 October 2018. On the same day, at the invitation of the Trust Fund, the VPRS sent comments.²³ On 24 October 2018, the Trust Fund met with the LRV to discuss, among other things, the last changes made to the Form.

10. The Trust Fund hereby submits the Draft Application Form as Annex 1 to the present submission.²⁴ It is the result of the thorough and numerous consultations described above, in fulfilment of the Trust Fund’s obligation to consult with all the stakeholders.²⁵ To the extent possible, the Trust Fund has endeavoured to include all comments received. Particular consideration was given to the LRV’s comments in light of his knowledge of the context and of current and potential applicants. Further, the Trust Fund believes that all comments from VPRS related to their involvement and processes have been taken into account. When debates

¹⁸ Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf.

¹⁹ Third Monthly Report, para. 22.

²⁰ Third Monthly Report, paras 19-21.

²¹ Third Monthly Report, paras 27-28.

²² Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

²³ Email from VPRS to Trust Fund on 19 October 2018 at 16:06.

²⁴ The Trust Fund recognises that the Form is submitted very shortly ahead of the UIP. The Trust Fund believes it is appropriate in light of the extended deadlines for the parties and participants’ observations on the UIP (30 days from its submissions in accordance with the Decision on the DIP, Section entitled “Disposition”). The Trust Fund discussed this issue with the LRV during the meeting on 24 October 2018. The Trust Fund is currently planning a mission to train intermediaries on the Form before the end of the year. In addition to the necessity to work with an approved Form, the Trust Fund will request its translation into French as soon as it is approved.

²⁵ Decision on DIP, para. 30.

arose in the course of the consultation process, the Trust Fund set out its position in detail so as to give the opportunity to other parties and participants to make their arguments.

11. In order for the Trial Chamber to be properly informed about the implications of certain choices made by the Trust Fund in shaping the Form, the Trust Fund also submits the legal criteria that must be applied throughout the screening process.

12. The Trust Fund believes that the Draft Application Form and the corresponding legal criteria satisfy the Trial Chamber's requirements and will ensure the proper and efficient functioning of the screening process. As stated in the Third Monthly Report, it is expected that applicants will require assistance to fill in the Form. Guidelines to train those individuals who will provide this assistance (intermediaries) are currently being drafted ("Guidelines").

II. CLASSIFICATION

13. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, this filing is classified as confidential because it contains information related to the legal criteria for eligibility for individual reparations which, by virtue of the nature of the criteria discussed herein, could identify potential beneficiaries. A public redacted version will be filed shortly.

III. SUBMISSIONS

14. The Trust Funds sets out below its interpretation of the legal criteria set by the Trial Chamber in respect of (i) general considerations such as the nature of the applicant; (ii) individual reparations for economic harm; (iii) individual reparations for moral harm; and (iv) standard of proof and type of proof. When the Trust Fund elected to not incorporate one of the LRV's suggestions, the rationale is made clear to enable proper adjudication of the matter, if necessary.

A. GENERAL CONSIDERATIONS

15. **Personal information** – The Trust Fund has included the LRV's proposal to include additional personal information (such as marital status and current town of residence) on the form. However, at the suggestion of VPRS,²⁶ this information has been included on page five

²⁶ Email from VPRS to Trust Fund on 19 October 2018 at 16:06.

rather than on page one, as page five is the page containing all personal contact information which will be removed from transmission to the Defence.

16. **Nature of the applicant (individual or organisation)** – The Trust Fund has prepared a Form for individuals. As agreed with the LRV,²⁷ should an organisation come forward to apply, the Trust Fund stands ready to prepare a separate adapted form.²⁸ In the Reparations Order, the Trial Chamber found that individual reparations for moral harm were to be awarded “for the mental pain and anguish of those whose ancestors’ burial sites were damaged in the attack”.²⁹ Accordingly, the Trust Fund considers that only individuals are eligible for individual reparations for moral harm. The Trust Fund considers that the situation is different in the case of individual reparations for economic harm to “those whose livelihoods *exclusively* depended upon the Protected Buildings”,³⁰ *i.e.* persons whose livelihood was to maintain and protect the Protected Buildings,³¹ and certain business owners.³² The Trust Fund recognises the possibility that a legal entity owned a business and would thus potentially meet the Exclusive Link Requirement.

17. **Gender perspective** –The Trust Fund has duly noted the LRV Observations on the increased difficulties that women may face when applying. The Trust Fund will make sure to include specific directions on this matter in the Guidelines and to administer proper training on this issue so as to ensure that women are not discouraged from applying.³³

B. INDIVIDUAL REPARATIONS FOR ECONOMIC HARM

18. **Eligible Victims: Exclusive Link Requirement** – In the Reparations Order, the Trial Chamber awarded individual reparations for economic harm to those whose livelihood depended *exclusively* on the Protected Buildings.³⁴ The Trial Chamber indicated in the Decision on DIP that a mason and a guardian meet this criterion and that other individuals who are not a mason or a guardian are not precluded from receiving individual reparations for

²⁷ Meeting with LRV on 24 October 2018.

²⁸ The Trust Fund takes the view that having a unique form for individuals and organisations would risk making the form confusing and heighten the chance of errors being made in completing the form.

²⁹ Reparations Order, ICC-01/12-01/15-236, para. 90.

³⁰ Reparations Order, para. 81.

³¹ Reparations Order, para. 81; Decision on DIP, para. 63.

³² Reparations Order, para. 81.

³³ The Trust Fund has also made sure that the form is worded neutrally (see question 2.1 “did he or she ...”).

³⁴ Reparations Order, ICC-01/12-01/15-236, para. 81; Decision on DIP, ICC-01/12-01/15-273-Red, para. 63.

economic harm, provided that they can demonstrate this link (“Exclusive Link Requirement”).³⁵ On 10 August 2018, the Trust Fund proposed two interpretations of the Exclusive Link Requirement and requested clarification as to which was applicable (“Clarification Request”).³⁶ The Chamber rejected the Clarification Request, but it recalled that the Appeals Chamber rejected one of the LRV’s grounds of appeal that asserted that the Exclusive Link Requirement was too restrictive and required revision or further definition. The Trial Chamber also emphasised that it never intended for the Exclusive Link Requirement to be so limiting as to foreclose any meaningful individual reparations.³⁷ While the LRV did not respond to the Clarification Request, he has continued to indicate to the Trust Fund, by email and in the LRV Observations, that the Trust Fund had not made its interpretation of the exclusive Link Requirement known³⁸ and that it seemed to be too restrictive.³⁹

19. A correct understanding of the meaning of the Exclusive Link Requirement by all actors involved (in particular the Trust Fund and the LRV) ahead of VPRS’ first transmission will be crucial to the success of the screening process, in light of its vast practical implications. In order to manage victims’ expectations, it is important that the intermediaries who will assist the applicants to fill in the form do not encourage applications that would certainly fall outside the scope of the Trial Chamber’s interpretation of this criterion. This is particularly important because the LRV – who is playing a very important role in finding new applicants and in collecting supporting documents for applicants whose applications are already in the case record – and the Trust Fund do not seem to have the same understanding. An erroneous interpretation of the Exclusive Link Requirement may also lead to an unduly high number of requests for judicial review to the Trial Chamber. Lastly, the Trust Fund wishes to underline that this debate is not an abstract one, but arose out of information retrieved from the field.

³⁵ Decision on DIP, ICC-01/12-01/15-273-Conf, para.64.

³⁶ Request for clarification of the eligibility criteria for individual reparations awards related to economic harm, ICC-01/12-01/15-274-Red (public redacted version notified 15 August 2018). According to the first interpretation, an applicant would be eligible for individual reparations only if they could show that their entire earning depended on such work. According to the second interpretation, an applicant would be eligible for individual reparations if they could show that the earnings lost depended exclusively on the Protected Buildings even if they had a separate source of income (Clarification Request, ICC-01/12-01/15-274-Red, para. 12).

³⁷ Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, ICC-01/12-01/15-280.

³⁸ See, in particular, LRV Observations, para. 62.

³⁹ See, in particular, LRV Observations, paras 63-70.

20. The Trust Fund recalls that the Trial Chamber has already found that masons and guardians meet the Exclusive Link Requirement.⁴⁰ Accordingly, these individuals are expected to produce proof of this status, *i.e.* that they occupied this function at the time of the crime. What remains to be resolved is the position of individuals exercising other vocations (such as imams, marabouts or caretakers), as the Chamber decided that they may be eligible *provided that they meet the Exclusive Link Requirement*.⁴¹ The Trust Fund's below explained position is premised on: (i) the Reparations Order, as interpreted by the Decision on the DIP and the Clarification Decision; and (ii) information from the field on the factual reality of the situation.

21. First, the Trust Fund understands that the Reparations Order envisages the reparations for the economic harm as primarily collective. Only a discrete sub-group believed to have suffered a more acute harm, in the form of *direct* economic loss (as opposed to consequential economic loss) is intended to be the recipient of individual awards.⁴² The Trust Fund is guided by this rationale of the Trial Chamber and considers that it is not its role to expand the scope of individual awards. As stated by the Trial Chamber in the Reparations Order when it established the Exclusive Link Requirement,⁴³ the Trust Fund emphasises in this respect that individuals not meeting the threshold for individual reparations will nevertheless fall within the reach of collective reparations. Specific directions to this effect will be included in the Guidelines for intermediaries and they will be encouraged to keep track of individuals clearly falling outside the scope of individual reparations, but potentially eligible for collective reparations to ensure that they are reached by the latter.

22. Second, the Trust Fund has received information from the field that in practice no individual depended 100% on the Protected Buildings for their livelihood (even masons and guardians). Rather, it appears that some individuals were involved to such an extent in the protection or maintenance of the Protected Buildings that it can be confidently stated that their livelihood exclusively depended on this occupation, even if they benefited from marginal subsidiary sources of income.

⁴⁰ Decision on DIP, para.63.

⁴¹ Decision on DIP, para.63.

⁴² Reparations Order, paras 73, 74, 81-82.

⁴³ Reparations Order, para. 81.

information is discovered providing additional indicators. Should this be the case, the Trust Fund will promptly inform the Chamber as well as all parties and participants.

27. **Individual reparations for economic harm** – The Trust Fund has identified certain functions that may qualify for individual reparations – provided that they meet the Exclusive Link Requirement – such as imams, marabouts or caretakers and has added an “Other” check box to ensure that no applicant is improperly excluded. The Trust Fund has noted the LRV’s proposal to expand the list of functions by including [REDACTED] for instance.⁴⁸ As discussed with the LRV,⁴⁹ in order to not overburden the Form, the Trust Fund will include the fact that individuals who occupied these functions may also be eligible in the Guidelines and will make sure to administer proper training on this issue to the intermediaries.

28. **Business that depended exclusively on the Protected Buildings** – The LRV submitted on two occasions⁵⁰ that the term “business” was too narrow and risks excluding craftsmen who have no proof of their activity. The LRV requested that it be replaced by “material harm caused by the destruction”. The Trust Fund reiterates that the term “business” is that used by the Trial Chamber itself and finds that the LRV’s suggestion is too broad and seems to suggest that individuals not meeting the Exclusive Link Requirement are eligible. Accordingly, the Trust Fund has retained the term “business” in the form.⁵¹

29. **Families members of potential beneficiaries of reparations for economic harm** – The Trust Fund has noted the Trial Chamber’s direction that “when determining the amount to be awarded to an individual, the TFV, to the extent feasible, take into account the size of the family and degree of involvement in the protection and maintenance of the Protected Buildings”.⁵² As will be described in detail in the UIP, the Trust Fund has carefully taken this direction into account and, if approved by the Trial Chamber, will grant scaled awards taking into account the size and the involvement of family members in the protection or maintenance of the Protected Buildings. This approach is reflected in question 4.1 of the

⁴⁸ Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

⁴⁹ Phone conversation with the LRV on 19 October 2018.

⁵⁰ LRV Observations, para. 61; email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

⁵¹ See Third Monthly Report, paras 19-21.

⁵² Decision on DIP, ICC-01/12-01/15-273-Red, para. 65.

Form “Please indicate how many family member(s) of the applicant, if any, was /were involved in the protection and maintenance of the Protected Building(s)”.

30. In respect of the proof required, the Trust Fund agrees with the LRV’s suggestion⁵³ to establish this by way of an attestation by a witness of the relationship between the applicant and the family member as well as a description of the family member’s role.⁵⁴

31. To guarantee the integrity of the screening process, the Trust Fund deems it necessary to verify whether the family members claimed to have been involved in the protection or maintenance of a Protected Building have or intend to apply for individual reparations themselves.⁵⁵ This is because awards will be distributed as the decisions are made and it is therefore necessary to ensure that individual reparations are not wrongfully awarded twice in the same family. The Trust Fund will make sure that there is a way to keep track of the individuals who received individual reparations and whether they received a scaled award on account of one or more family members.⁵⁶ The Trust Fund will include directions in its Guidelines to ensure that applicants are properly guided when filling the form. If an applicant reports the involvement of a family member that appears to be eligible for individual reparations, he or she will be encouraged to submit his or her own application forms.

C. INDIVIDUAL REPARATIONS FOR MORAL HARM

32. **Eligible victims: direct descendancy** – The Trial Chamber awarded individual reparations for moral harm to descendants in direct kinship with the saints⁵⁷ due to the “different kind of emotional connection to the destroyed sites than the rest of the Timbuktu population.”⁵⁸

33. The Trust Fund has been made aware that there is a different meaning and scope given to this category of beneficiaries in the local context. According to the information

⁵³ Meeting with the LRV on 24 October 2018.

⁵⁴ An *attestation de famille*, attached as Annex 3 to the present submission, can be produced to this effect.

⁵⁵ The Trust Fund has noted that the VPRS’ database does not permit automatic tracking of links between applicants and family members as well as the practical difficulties to decipher handwritten names on applications (Email from VPRS to Trust Fund on 24 October 2018 at 16:15).

⁵⁶ In respect of the difficulty to link family members with applicants who already obtained a scaled award on the basis of the handwritten information provided in the Form, the Trust Fund will apply the standard of balance of probabilities.

⁵⁷ Decision on DIP, para. 67.

⁵⁸ Reparations Order, para. 89.

retrieved from the field, the concept of “descendant” in Timbuktu is understood broadly and can encompass people who feel a spiritual bond with the saint and are to some extent adopted by the prominent family (*filiation spirituelle*);⁵⁹ as well as people who share the bloodline of the saint in question (*partager le sang*).

34. The Trust Fund considers that the interpretation of descendency based on *filiation spirituelle* sits outside the definition of kinship, even when broadly conceived; and that this category of people who feel strongly attached to a saint would rather benefit from the collective reparations for the mental pain/anguish and disruption of culture addressed to the community of Timbuktu as a whole.⁶⁰

35. As to the interpretation based on “sharing a bloodline”, the Trust Fund is of the view that this overlooks the “direct” kinship required by the Trial Chamber. While both a descendant and a direct descendant would share the bloodline of a saint, only the latter would have a lineal consanguinity relationship with him. In this regard, consanguinity is defined as “the familial relationship of persons united by one or more common ancestors,”⁶¹ whereas lineal consanguinity “refers to persons who are descended in a direct line from a common ancestor such as grandparents, parents, children, grandchildren.”⁶² The Malian Family Code acknowledges this difference explaining that “[l]a parenté en ligne directe est celle qui existe entre ascendants et descendants”,⁶³ and “[l]a parenté collatérale est celle qui existe entre des personnes qui ont un auteur commun sans que l'une descende de l'autre.”⁶⁴ The Trust Fund therefore considers that claiming to share a bloodline with a saint will not suffice to receive individual reparations for moral harm, and that only direct descendants as defined above, including women and children,⁶⁵ would qualify in light of their heightened familial and emotional connection to the affected burial sites.

⁵⁹ Email by LRV to TFV sent on 18 October 2018 at 15:29.

⁶⁰ Reparations Order, para. 90.

⁶¹ Steven H. Gifis, *Dictionary of Legal Terms* (New York: Barrons, 2008), p. 100.

⁶² Steven H. Gifis, *Dictionary of Legal Terms* (New York: Barrons, 2008), p. 100.

⁶³ *Loi n° 2011-087 du 30 Décembre 2011 Portant Code Des Personnes et de la Famille* (“Malian Family Code”), art. 550.

⁶⁴ Malian Family Code, art. 551.

⁶⁵ Decision on DIP, para. 67

36. Given the remoteness in time of the saints⁶⁶ and the generalised lack of records, it would be extremely difficult to trace their lineage from the time they lived to today. Therefore, in order to determine the direct descendants of the saints, the Trust Fund proposes to follow a bottom-up approach. Such an approach would entail establishing a presumption of direct kinship in favour of the prominent family responsible for a mausoleum that is socially perceived to be descendant of the saint in question. However, this is not the totality of family members who would qualify as direct descendants given the gender issue that family identity is based on male lineage. Accordingly, the Trust Fund will enquire with those socially perceived to be descendants who their sisters, aunts and the like are to track the female-based descendancy of the Saint.⁶⁷

37. The assumption that a match would exist between the prominent family responsible for a mausoleum and the main saint buried is premised on (1) the LRV's early observation that masons are "selected [...] by *the prominent family of the descendants of the mausoleum*";⁶⁸ and (2) consultations with two anthropologists specialised in Northern Mali. Both independently expressed the view that the correspondence between such families and the lineage of the saint was logical, but that exceptions may apply as well.⁶⁹

38. In order to reach female-based lines of descendancy, the Trust Fund will encourage the members of the prominent families associated with a mausoleum to identify and point to other relatives with a direct kinship link to a saint.⁷⁰ This is because family lineages are male-based: women marry into the husband's family, and her children bear the name of the

⁶⁶ Annex III to the Third Expert Report, ICC-01/12-01/15-214-Conf-AnxIII-Red, pp. 16-19.

⁶⁷ The Trust Fund believes that this adequately responds to the Trial Chamber's order to implement reparations, to every extent possible, "in a gender and culturally sensitive manner which does not exacerbate – and in fact addresses – any pre-existing situation of discrimination preventing equal opportunities to victims", Reparations Order, para. 105.

⁶⁸ Submissions of the Legal Representative of Victims on the principles and forms of the right to reparation, 2 December 2016, ICC-01/12-01/15-190-Conf-tENG, para. 25(f). In addition, reports from the field refer unequivocally to the concept of family of the mausoleum.

⁶⁹ Phone conversation with cultural anthropologist specialised in Northern Mali, 15 October 2018; Consultation n.1 with expert specialised in the politics of heritage management, received by the Trust Fund on 4 September 2018; follow-up email received on 19 October 2018 at 14:32.

⁷⁰ Decision on Draft Implementation Plan, para. 67. See also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A), ICC-01/04-01/06-3129-AnxA, paras 16,18.

father.⁷¹ While the wives of those men that bear a direct kinship with the saint cannot qualify as a direct descendant,⁷² those men's sisters, natural aunts (*i.e.* their fathers' sisters), brothers, natural uncles and the like would, as well as their own offspring -male and female.

39. Thus, a family or individual not covered by the presumption (*e.g.* those not recognised by the community as the prominent family) would have two alternative ways to establish direct kinship with a saint: (i) referral by the prominent family responsible for the mausoleum to other relatives (*e.g.* sisters, aunts and the like) with such a link;⁷³ or (ii) submission of documents proving direct kinship.

40. In relation to the documents to prove one's direct kinship, to the Trust Fund's knowledge, there are at least two types of documents that could perform such a function: historical genealogy records that some families still keep with them⁷⁴ and, according to a local expert,⁷⁵ genealogical references to the applicant family in two books which contain some genealogical information with respect to the saints of Timbuktu.⁷⁶

41. **Minors** – The Trust Fund has been faced with the question of whether minors who are direct descendants of the saints, but were born after the crime (*i.e.* 11 July 2012) should receive individual reparations for moral harm.

42. Trust Fund notes that it can be argued that the destruction of an ancestor's burial site causes irreversible and thus continuing damage to his descendants, including those that are born after the events. In this regard, the crime committed by Mr Al Mahdi has prevented the cultural and spiritual heritage of Timbuktu from fulfilling one of its core functions, that is to say being transmitted from generation to generation.⁷⁷

⁷¹ See *e.g.* Malian Family Code, art. 559: “[t]ous les membres d'une famille qui descendent par les mâles d'un auteur commun portent le même nom”. Further, customary and religious norms confer most inheritance rights to men.

⁷² See Malian Family Code, art. 546: “[l]a parenté par alliance a pour fondement le mariage”.

⁷³ An *attestation de filiation* (attached as Annex 4 to the present submission) can be produced to this effect.

⁷⁴ Phone conversation with cultural anthropologist specialised in Northern Mali, 15 October 2018.

⁷⁵ Email from Trust Fund's hired local expert to the Trust Fund on 17 October 2018 at 09:15.

⁷⁶ Ould Elhadje, Salem. “*Les saints de Tombouctou*” (Étude historique, 2015); and Saad, Elias N., “Social History of Timbuktu: The Role of Muslim Scholars and Notables 1400-1900” (Cambridge University Press, 1983).

⁷⁷ See *e.g.* Convention concerning the Protection of World Cultural and Natural Heritage, art. 4.

43. While recognising the unique harm to direct descendants born after the destruction of the Protected Buildings, the Trust Fund nonetheless considers that the harm was more acute for those who were alive during the events and for who the state of affairs changed due to Mr Al Mahdi's crime. The Trust Fund therefore proposes to allow only children born before 11 July 2012 to receive individual reparations in their quality of direct descendants in order to recognise this heightened degree of harm. However, all other minors, including those born after the events, will still be able to benefit from the existing collective reparations.

D. SUPPORTING DOCUMENTS

44. **Standard of proof** – The Trust Fund will apply the standard of balance of probabilities, as ordered by the Chamber.⁷⁸

45. **System of attestations** – In respect of the type of proof and supporting documents, the Trust Fund has faced difficulties arising primarily from the general lack of written records, as well as the volatile security situation in northern Mali, and Timbuktu specifically. In its DIP, the Trust Fund had indicated that attestations (properly notarized and witnessed) would be an acceptable form of supporting documents.⁷⁹ In this context, the LRV has prepared templates of attestations.⁸⁰ As indicated to the LRV, the Trust Fund has amended them to ensure that their content strictly match that of the application form. They are attached as annexes 2-4 to the present submission.⁸¹ It is expected that an individual submitting an application supports it with these attestations. Applications submitted without the relevant attestations will not be excluded *in limine* provided that they are supported by a comparable form of supporting document.

46. **Authorities** – The system of attestations relies on the fact that they will be filled in and signed by individuals capable (either through personal knowledge or through access to official records and documents due to their position) of attesting to the veracity of the

⁷⁸ Decision on DIP, para. 60.

⁷⁹ DIP, para. 168 and Annex I.

⁸⁰ The Trust Fund endorsed these attestations on a provisional basis pending the finalisation of the Form to ensure that the collection of supporting documents could unfold.

⁸¹ Annex 2 is the *attestation d'activité et de revenus* for applicants for reparations of economic harm; Annex 3 is the *attestation de famille* for applicants for reparations of economic harm claiming that one or more family members was involved in the protection or maintenance of the Protected Buildings and Annex 4 is the *attestation de filiation* for applicants for reparation of moral harm. The Trust Fund recognises that some of the attestations are in English and French: this is so because they must track strictly the language of the Form, which is not translated yet.

information contained in the application. In the DIP, the Trust Fund proposed a list of officials that may possess signatory authority in the administrative screening process.⁸² In its Decision on the DIP, the Chamber approved this system and directed the Trust Fund to consult further with the LRV on these authorities.⁸³ Fruitful consultations took place.⁸⁴

47. In the course of these consultations, the Trust Fund's attention was directed to the fact that the list of authorities proposed seldom coincided with the list of authorities appearing in the applications. The Trust Fund updated its list by including them, provided that they were authorities inherently vested with the authority to sign documents (such as police commissioner or civil servant).⁸⁵ At that stage, the Trust Fund did not include the *chefs coutumiers* and *chefs spirituels* pending receipt of further information.⁸⁶ It is not – and it was not –⁸⁷ the Trust Fund's position that *chefs coutumiers* or *chefs spirituels* are not qualified to sign attestations. Simply, the Trust Fund wished to obtain basic background information prior to including them on the list. Subsequently, the LRV made submissions on the legitimacy of *chefs coutumiers* or *spirituels* to sign attestations.⁸⁸ He further indicated that these authorities cannot produce stamped documents as well as a record of the cases they dealt with.⁸⁹

48. The Trust Fund wishes to clarify several points. First, the list of authorities presented contains people who *may* possess signatory authority in the administrative screening process. This list was intended to be illustrative and not limitative. The Trust Fund will not reject *in limine* an attestation signed by an individual absent from the list. Second, the Trust Fund agrees with the LRV's submissions on the appropriateness of relying *inter alia* on traditional leaders and accepts that they cannot produce stamped documents or records of cases. The Trust Fund is prepared to rely on the attestations the traditional leaders sign, provided that the LRV makes sure to provide the Trust Fund with background information on why they are traditional leaders. This is necessary to ensure the integrity of the process. Third, the Trust

⁸² DIP, para. 168 and Annex I; *see also* Annex II to Second Monthly Report, ICC-01/12-01/15-283-Conf-anxII-Corr.

⁸³ Decision on DIP, para. 61.

⁸⁴ The Trust Fund has been in regular contact with the LRV and the VPRS on the issue of the list of authorities and *modèles d'attestation* (for instance, email exchange of 29 August 2018 on the attestations, of 30 August 2018 on the list of authorities, meeting on 24 October 2018 with the LRV).

⁸⁵ Second Monthly Report, para. 20.

⁸⁶ Second Monthly Report, paras 21-23.

⁸⁷ Third Monthly Report, para. 27; Second Monthly Report, para. 21.

⁸⁸ LRV Observations, paras 49-52.

⁸⁹ Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

Fund will accept an attestation if it is clear that the signing authority is attesting to the truth of the content of the application and is not merely rubberstamping it. This will be evaluated taking into account various information such as (i) the content of the response to the question to this effect on the attestation;⁹⁰ (ii) the relationship between the authority and the applicant; (iii) whether other relevant supporting documents are appended to the applications; and (iv) the date of signature of the attestations and of the application. This approach strikes the appropriate balance between guaranteeing the integrity and fairness of the screening process while taking into account the generalised lack of official records prevailing in Mali.

49. As will be set out in more details in the upcoming UIP, in light of the tense security situation, the outreach campaign to identify new applicants will be based on word of mouth: applicants will be encouraged to contact relatives and acquaintances that might be eligible. Given that the Trust Fund does not have the ability to verify the information contained in the applications and must rely on these attestations, it is particularly necessary to ensure that authorities certifying the applications do so exercising diligence and attest to the truth of their content.

50. Finally, in respect of the attestations already in the record of the case, in order to not unduly complicate the work of the LRV and VPRS, the Trust Fund agrees with the LRV's suggestion to complement the applications by providing by email the missing information on the traditional leaders (*i.e.* why are they traditional leaders) and the missing information as to why any of the certifying authorities used so far were capable of attesting to the truth of the contents of the application's they attested to (that is "how do they know"). The Trust Fund has been informed by VPRS that certain traditional leaders simply signed "*chefs coutumier*" without specifying their names. The Trust Fund is satisfied with the LRV's suggestion to provide it with a list of the *chefs coutumiers* addressing the two above issues.

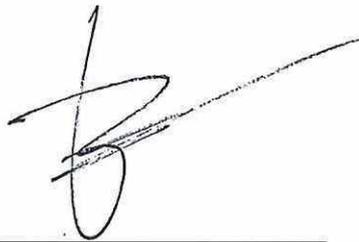
51. After thoughtful consideration and extensive consultations, the Trust Fund understands that the foregoing parameters respond both to the criteria provided by the Trial Chamber, and the situation in the field.

⁹⁰ The following question has been added to the attestations: "*Nous, (Nom, Prénom) [...] sommes en mesure d'attester de la véracité de ces informations en raison de : [...]* ".

52. The Trust Fund expresses its gratitude to the LRV and the VPRS for their cooperation throughout the process leading to this submission.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests that the Trial Chamber adopt the Form attached as Annex 1.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
On behalf of the Board of Directors of the Trust Fund for Victims

Dated 26 October 2018

At The Hague, The Netherlands